

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EFREN JAMES JAMIR and ERICA
JAMIR, husband and wife, and the marital
community composed thereof,

Plaintiff,

v.

THE STANDARD FIRE INSURANCE
COMPANY, an insurance company,

Defendant.

CASE NO. C10-569RSM

ORDER

This matter is before the Court for consideration of defendant's motion for partial summary judgment regarding plaintiffs' claims under RCW 48.30.015. Dkt. # 15. Defendant asks for dismissal of plaintiffs' claims for failure to comply with the named statute, and plaintiff has opposed the motion. For the reasons set forth below, the motion shall be denied.

BACKGROUND

Plaintiffs filed this action in King County Superior Court, asserting that defendant improperly denied their claim for insurance coverage following a fire that damaged their

1 residence. The original complaint asserted claims of breach of contract, bad faith, violation of
 2 certain provisions of the Washington Administrative Code, and violation of the Washington
 3 Consumer Protection Act ("CPA"). Dkt. # 1-3. Defendant timely removed the case to this
 4 Court. Shortly after removal, and before defendant filed an answer, plaintiff filed an amended
 5 complaint, adding a new claim under the Washington Insurance Fair Conduct Act, RCW
 6 48.30.015. Defendant's motion seeks dismissal of this claim for failure to comply with the
 7 notice requirement set forth in the statute.

8 DISCUSSION

9 The Washington Insurance Fair Conduct Act ("IFCA") provides for an award of up to
 10 three times the amount of actual damages, plus attorney's fees, where an insurer has
 11 unreasonably denied coverage to an insured. The statute states, in relevant part,

12 **Unreasonable denial of a claim for coverage or payment of benefits.**

13 (1) Any first party claimant to a policy of insurance who is unreasonably denied a
 14 claim for coverage or payment of benefits by an insurer may bring an action in the
 15 superior court of this state to recover the actual damages sustained, together with
 the costs of the action, including reasonable attorneys' fees and litigation costs,

16 (2) The superior court may, after finding that an insurer has acted unreasonably in
 17 denying a claim for coverage or payment of benefits or has violated a rule in
 subsection (5) of this section, increase the total award of damages to an amount
 18 not to exceed three times the actual damages.

19 (3) The superior court shall, after a finding of unreasonable denial of a claim for
 20 coverage or payment of benefits, or after a finding of a violation of a rule in
 subsection (5) of this section, award reasonable attorneys' fees and actual and
 21 statutory litigation costs, including expert witness fees, to the first party claimant
 of an insurance contract who is the prevailing party in such an action.

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23 (6) This section does not limit a court's existing ability to make any other
 24 determination regarding an action for an unfair or deceptive practice of an insurer
 or provide for any other remedy that is available at law.

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2 (8)(a) Twenty days prior to filing an action based on this section, a first party claimant
3 must provide written notice of the basis for the cause of action to the insurer and office
4 of the insurance commissioner. Notice may be provided by regular mail, registered
5 mail, or certified mail with return receipt requested. Proof of notice by mail may be
6 made in the same manner as prescribed by court rule or statute for proof of service
7 by mail. The insurer and insurance commissioner are deemed to have received notice
8 three business days after the notice is mailed.

9 (b) If the insurer fails to resolve the basis for the action within the twenty-day period
10 after the written notice by the first party claimant, the first party claimant may bring
11 the action without any further notice.

12 (c) The first party claimant may bring an action after the required period of time in (a)
13 of this subsection has elapsed.

14 (d) If a written notice of claim is served under (a) of this subsection within the time
15 prescribed for the filing of an action under this section, the statute of limitations for
16 the action is tolled during the twenty-day period of time in (a) of this subsection.

17 RCW 48.30.015.

18 Plaintiffs filed this action in state court on March 2, 2010. On March 19, 2010, plaintiffs
19 sent the notice required by RCW 48.30.015(8)(a). The notice was sent by mail to defendant and
20 to the Office of Insurance Commissioner. Declaration of Jennifer Dinning, Dkt. # 16-2, Exhibit
21 C. Defendant date-stamped the notice “received” on March 24, 2010. *Id.* Plaintiff’s amended
22 complaint bearing the new claim under IFCA was filed April 19, 2010. Dkt. # 6.

23 Defendant contends the IFCA claim in the amended complaint must be dismissed
24 because plaintiffs did not provide the twenty-day notice before filing the original complaint.
However, since the original complaint did not include an IFCA claim, no notice was required at
that time. Section (6) of the statute clearly recognizes that common law and other claims not
brought pursuant to the IFCA are not subject to the notice requirement.

Defendant would have the Court read section (8)(a) to state that “twenty days before
filing an action . . . a first-party claimant must provide written notice. . .” That is not the

1 language of the statute. The statute is clear on its face that the notice need only be filed twenty
2 days before filing “an action **based on this section.** . . .” Plaintiff’s action was not “based on
3 this section” until April 19, 2010 when they amended their complaint to include a claim under
4 the IFCA.

5 Defendant’s dismissal argument is based on a distinction between a “claim” and an
6 “action” which is not meaningful in this context. Plaintiffs did provide the twenty-day notice of
7 their IFCA claim before amending their complaint to include that claim. Defendant’s motion for
8 partial summary judgment on the IFCA claim (Dkt. # 15) is accordingly DENIED.

9 In light of this ruling, the Court does not reach the parties’ constitutional arguments based
10 on *Waples v. Yi*, 169 Wash. 2d 152 (2010).

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12 Dated December 3, 2010.

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15 RICARDO S. MARTINEZ
16 UNITED STATES DISTRICT JUDGE
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